

**IN THE CHANCERY COURT
FOR WASHINGTON COUNTY, TENNESSEE
AT JONESBOROUGH**

BOBBY MacBRYAN GREEN,

Plaintiff / Petitioner,

v.

**JODI JONES,
HOWELL SHERROD,
BETTY ANN POLAHA, and
MARY LEE JONDAHL,**

Civil Action No. 41049

Defendants / Respondents.

MOTION TO ALTER OR AMEND

Now comes Plaintiff Bobby MacBryan Green pursuant to Rule 59, Tennessee Rules of Civil Procedure, and moves the Court to alter or amend the order of dismissal entitled “*Final Decree*” entered on 9 August 2011 when the sole matter before the Court was Defendants’ *Motion to Dismiss*. There was no evidence taken, no testimony offered, no stipulation, and no prior notice that the Court intended to examine more than the sworn *Complaint* and its proffered sworn supplement. The *Final Decree* incorporates material neither in the record nor in the file at the time of its Rule 58 entry. The *Final Decree* awards immediate surprise declaratory and injunctive relief to the defendants. The *Final Decree* precludes proceedings for summary judgment and discovery, which are

Plaintiff's by right because of the Court's consideration of the defendants' *Affidavits* and *Answer*.

In support of this motion, Plaintiff would show unto the Court that:

1. "The failure to state a claim for which relief can be granted is determined from an examination of the complaint alone." Wolcotts Fin. Servs., Inc. v. McReynolds, 807 S.W.2d 708 (Tenn. Ct. App. 1990).

If, on a motion asserting the defense numbered (6) to dismiss for failure to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56. Tennessee Rules of Civil Procedure, Rule 12.02.

2. Although the *Final Decree* is predicated upon Defendants' *Motion to Dismiss* for failure to state a claim upon which relief can be granted, that *Final Decree* does indeed grant relief, both injunctive and declaratory, to Defendant Jones immediately upon entry.

3. The order of dismissal contains a mandatory injunction ordering compliance with a list which was not a part of the record. That list, which the *Final Decree* incorporates as an attachment, bears a file stamp indicating that the list was not received into the record until 13 minutes after the *Final Decree* was entered. That list bears a facsimile heading which identifies its source as the office of the attorney for the defendants, with an integral time stamp indicating that the list was faxed at a time later than the time of entry of the *Final Decree*.

4. The facsimile heading on that list, in addition to the signed approval for entry

on the *Final Decree*, indicates that counsel for the defendants drafted all or part of the *Final Decree*, and therefore that the plaintiff was entitled to an opportunity to respond to the draft pursuant to Local Rule 6.01.C :

The attorney drafting the order shall serve it upon opposing counsel for approval within ten (10) days of the Court's decision or jury verdict. Opposing counsel shall either 1) approve the order and submit it to the judge for signature ... or 2) submit an alternative order... .

Entry of the *Final Decree* on 9 August 2011 deprived the plaintiff of that right.

5. The order of dismissal refers to the *Answer* and *Affidavits* submitted by the defendants. Those *Affidavits* improperly consist of legal conclusions without proper foundation. The *Affidavits* were not excluded and therefore, the Plaintiff was and is entitled by the provisions of Rule 12.02, TN.R.Civ.P. to all the benefits provided by Rule 56, TN.R.Civ.P.

6. The order of dismissal declares Jodi Jones to be President of SNO in disregard of Plaintiff's sworn statements.

7. The *Final Decree* refers to "evidence introduced into open court" and "the stipulation of the parties." There was **neither**.

8. Plaintiff's claims were dismissed for failure to state a claim upon which relief could be granted, although the following facts were sworn to by Plaintiff and never refuted in the record:

a. Plaintiff was elected to a definite two year term ending in January 2013 as President of SNO. Sworn *Complaint* ¶ 4.

b. SNO is governed by Robert's Rules of Order, Newly Revised [hereinafter "RONR"] . Sworn *Complaint* ¶ 2.

c. RONR, p. 643, lines 5-14 mandates that :

If, however, the bylaws provide that officers shall serve *only* a fixed term, such as “for two years” an officer can be deposed of office only by following the procedures for dealing with offenses by members outside a meeting; that is, an investigating committee must be appointed, it must prefer charges, and a formal trial must be held.

Sworn *Complaint* ¶ 14.

No provision in the *SNO Bylaws* attenuates this mandate. That is, the *Bylaws* do **not** state that ‘the Executive Board has authority to depose an officer without due process or regard for RONR.’ See *SNO Bylaws* being *Exhibit One to the Complaint*.

d. Defendants demonstrated an intent to violate the Plaintiff’s rights by precipitately convening the SNO Executive Board for improper purpose. A plan for the use of improper procedures at that called meeting was announced. Sworn *Complaint* ¶ 18.

e. Defendants’ acknowledge that “the allegations on which relief has been sought have already occurred ...” *Answer* ¶ 19.

f. The action taken to remove Plaintiff as President at the invalid 26 June 2011 Executive Board meeting was improper. Sworn *Motion for Supplemental Pleadings* ¶ 14 and sworn *Motion for Temporary Injunction* ¶ 14.

g. At least one member of the Executive Board was not made aware of the Call for the 26 June 2011 meeting, preventing the transaction of any business. Sworn *Motion for Supplemental Pleadings* ¶ 10-11, sworn *Motion*

for Temporary Injunction ¶¶ 10-11.

h. Plaintiff, not Jodi Jones, is the rightful President of SNO. *Sworn Motion for Supplemental Pleadings ¶ 7, sworn Motion for Temporary Injunction ¶ 7.*

9. Plaintiff was allowed no opportunity to present to the Court crucial facts which have occurred during the pendency of this civil action. Attached hereto as *Exhibit Y* is the 7 July 2011 letter to Plaintiff signed by seven Executive Board members describing his exemplary contributions to SNO. Attached hereto as *Exhibit Z* are the purported *Minutes* for the purported Executive Board meeting on 26 June 2011 which clearly indicate the use of improper procedures including transaction of business in the absence of a quorum, acceptance of absentee ballots, lack of required charges and notice thereof, and lack of the required trial. The date was knowingly chosen to coincide with Plaintiff's rare out-of-state absence.

10. Defendant Betty Ann Polaha, mother of Jodi Jones and SNO Secretary, has denied Plaintiff access to crucial documents related to this matter despite his repeated requests and despite the explicit mandate by RONR, p. 442, lines 32-33, that she provide the same. By her refusal, Plaintiff has been and continues to be prejudiced.

11. The undisputed specific facts establish that there was no valid meeting of the SNO Executive Board on 26 June 2011 due to lack of notice to every board member and due to the absence of a quorum. The undisputed specific facts also establish that the minimal requirements of due process and of parliamentary law for the removal of Plaintiff from office were not met, and that Plaintiff is not incapacitated but has instead diligently fulfilled the responsibilities of SNO President.

12. Plaintiff is entitled to exercise his rights as set forth under Rule 56,

TN.Civ.R.P. and attaches hereto as *Exhibit X* his *Statement of Facts* and supporting *Affidavit of Bobby MacBryan Green*.

13. THEREFORE, Plaintiff prays the Court to alter or amend the *Final Decree* by ordering the following :

- (a) The declaratory and injunctive relief granted to the defendants is set aside.
- (b) Plaintiff has set forth a valid cause of action.
- (c) Plaintiff's *Motion for Temporary Injunction* is granted.
- (d) Plaintiff's *Motion for Supplemental Pleadings* is granted and the defendants are ordered to file a concise and fully responsive *Supplemental Answer* within 15 days after service of the plaintiff's finalized *Supplemental Complaint*.
- (e) All costs of this civil action to date are taxed against the defendants.

THIS THE 8th DAY OF SEPTEMBER 2011.

Respectfully submitted,

Bobby MacBryan Green, MD
Petitioner/Plaintiff
404 Holly Street
Johnson City, Tennessee 37604
423.928.1219

Attachments :

Exhibit X: Statement of Facts and supporting *Affidavit of Bobby MacBryan Green*

Exhibit Y: 7 July 2011 letter to Plaintiff

Exhibit Z : purported Executive Board Minutes

Affidavit and Certificate of Service

Bobby MacBryan Green, after having been duly sworn and deposed, says : I am the Plaintiff/Petitioner in this matter. On this day I served a true and accurate copy of the attached MOTION TO ALTER OR AMEND including STATEMENT OF FACTS and AFFIDAVIT OF BOBBY MacBRYAN GREEN upon counsel for the defendants :

Howell Sherrod, Jr.
SHERROD, GOLDSTEIN & LEE
249 East Main Street
Johnson City, TN 37604

by placing the same in an official depository of the U.S. Postal Service, first class, postage prepaid, on this the 8th day of September 2011.

Bobby MacBryan Green
Plaintiff/Petitioner

WASHINGTON COUNTY, TENNESSEE

Bobby MacBryan Green, with whom I am personally acquainted and who also produced trustworthy identification, personally appeared before me this day, and after being duly sworn, executed the above *Affidavit and Certificate of Service*. This the 8th day of September 2011.

Deputy Clerk and Master

SOUTHSIDE NEIGHBORHOOD ORGANIZATION

Minutes for 26 June 2011

Special Meeting of the Executive Board

7PM at Holston Methodist Conference District Office – 210 W. Maple Street

Jodi Jones Vice President called this special meeting of the executive board to hold a vote regarding whether Bryan Green should remain as President. The members were contacted and the meeting was posted on the SNO website over 48 hours in advance.

The meeting was called to order at 7:05PM. Howell Sherrod, a SNO member acted as moderator.

There were 11 people in attendance. There were five (5) executive board members present and one (1) conferenced in by phone for a total of six (6). Six (6) other attendees were SNO members.

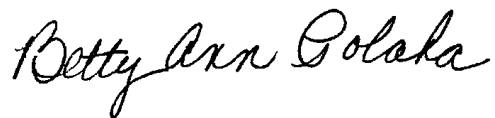
Mary Lee Jondahl motioned that the members agree to a voice vote rather than secret ballots. There were no objections to a voice vote and a role call vote was taken.

Bryan Green, Karen Cajka, Neil Owen and Katherine Weiss were absent. Neil Owen and Karen Cajka had sent notarized ballots prior to the meeting. There were 7 votes to remove Bryan as President. There were no votes from Bryan Green or Katherine Weiss. The SNO By-Laws require $\frac{3}{4}$ of the executive board to be in agreement, therefore Bryan Green was discharged as President.

As per the SNO By Laws Jodi Jones will act as President for the remainder of the term. It was decided any further changes to the executive board would be done at regular monthly meetings.

The meeting adjourned at approximately 7:20 PM.

Respectfully Submitted,
Betty Ann Polaha



Southside Neighborhood Organization Secretary

